

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 08, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BILLY W.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

No. 1:20-CV-03079-SAB

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Plaintiff's and Defendant's Motions for Summary Judgment, ECF Nos. 17, 18. Plaintiff is represented by Victoria Chhagan. Defendant is represented by Erin Highland, Jeffrey Staples, Sarah Moum, and Timothy M. Durkin. The motions were heard without oral argument. Having considered the briefing and the applicable law, the Court grants Defendant's motion and denies Plaintiff's motion.

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. *See* 42 U.S.C. § 405(g).

Jurisdiction

Plaintiff filed a disability insurance benefits application on June 29, 2016, alleging disability as of his filing date. Plaintiff's claims were initially denied on October 20, 2016, and again upon reconsideration on January 5, 2017. The ALJ held a hearing on August 27, 2018, and then a supplemental hearing on April 2, 2019. On June 25, 2019, the ALJ issued an opinion affirming the denial of Plaintiff's claims for benefits.

Plaintiff requested review of the ALJ decision, which the Appeals Council denied on April 2, 2020. Plaintiff then filed a timely appeal with the United States District Court for the Eastern District of Washington on June 2, 2020. ECF No. 1. The matter is before this Court under 42 U.S.C. § 405(g).

Sequential Evaluation Process

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). A claimant shall be determined to be under a disability only if his impairments are of such severity that the claimant is not only unable to do his previous work, but cannot, considering claimant's age, education, and work experiences, engage in any other substantial gainful work that exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v. Yuckert*, 482 U.S. 137, 140–42 (1987). The steps are as follows:

(1) Is the claimant engaged in substantial gainful activities? 20 C.F.R. § 404.1520(b). Substantial gainful activity is work done for pay and requires compensation above the statutory minimum. *Id.*; *Keyes v. Sullivan*, 894 F.2d 1053,

1 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity, benefits are
2 denied. 20 C.F.R. § 404.1520(b). If he is not, the ALJ proceeds to step two.

3 (2) Does the claimant have a medically severe impairment or combination of
4 impairments? 20 C.F.R. § 404.1520(c). If the claimant does not have a severe
5 impairment or combination of impairments, the disability claim is denied. A severe
6 impairment is one that lasted or must be expected to last for at least 12 months and
7 must be proven through objective medical evidence. 20 C.F.R. § 404.1509. If the
8 impairment is severe, the evaluation proceeds to the third step.

9 (3) Does the claimant's impairment meet or equal one of the listed
10 impairments acknowledged by the Commissioner to be so severe as to preclude
11 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R. § 404 Subpt. P.
12 App. 1. If the impairment meets or equals one of the listed impairments, the
13 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
14 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.
15 Before considering Step 4, the ALJ must first determine the claimant's residual
16 functional capacity. 20 C.F.R. § 404.1520(e). An individual's residual functional
17 capacity is his ability to do physical and mental work activities on a sustained basis
18 despite limitations from his impairments.

19 (4) Does the impairment prevent the claimant from performing work he has
20 performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to perform
21 his previous work, he is not disabled. *Id.* If the claimant cannot perform this work,
22 the evaluation proceeds to the fifth and final step.

23 (5) Is the claimant able to perform other work in the national economy in
24 view of his age, education, and work experience? 20 C.F.R. § 404.1520(g). The
25 initial burden of proof rests upon the claimant to establish a *prima facie* case of
26 entitlement to disability benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
27 1999). This burden is met once a claimant establishes that a physical or mental
28 impairment prevents him from engaging in his previous occupation. *Id.* At Step

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT...# 3**

Five, the burden shifts to the Commissioner to show that the claimant can perform other substantial gainful activity. *Id.*

Standard of Review

The ALJ's determination will be set aside only when their findings are based on legal error or are not supported by substantial evidence in the record as a whole. *See Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla," *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance." *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the ALJ's denial of benefits if the evidence is susceptible to more than one rational interpretation, one of which supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). The Court reviews the entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). "If the evidence can support either outcome, the court may not substitute its judgment for that of the ALJ." *Matney*, 981 F.2d at 1019.

A decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are immaterial to the ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

Facts

Plaintiff was 29 years old at the time of his alleged disability onset date. Plaintiff did not complete high school or obtain his GED. He states that, while he was in school, he was in special education for learning disabilities and behavioral problems. Plaintiff also alleges that he has been assessed with a verbal IQ of 67, a

1 performance IQ of 81, and a full-scale IQ of 72. Plaintiff has worked primarily as a
2 laborer, janitor, and dishwasher.

3 In Plaintiff's application, he alleged that he had mental limitations—
4 specifically anxiety, depression, and PTSD. AR at 228. In his opening brief,
5 Plaintiff alleges that he has other long-standing mental impairments, including
6 bipolar disorder, schizoaffective disorder, psychotic disorder, panic disorder,
7 PTSD, and a borderline personality disorder. ECF No. 17 at 3-4. Plaintiff also
8 alleges that he has severe behavioral problems, including physical aggression,
9 threatening and intimidating others, refusing to work, and disrupting others.
10 Finally, Plaintiff has a history of alcohol and drug abuse, particularly of
11 methamphetamine.

12 **The ALJ's Findings**

13 On June 25, 2019, the ALJ issued an opinion affirming denial of benefits.
14 The ALJ concluded that Plaintiff was capable of making a successful adjustment to
15 work that exists in significant numbers in the national economy. Thus, the ALJ
16 held that Plaintiff was not disabled. AR at 26.

17 At **step one**, the ALJ found that Plaintiff has not engaged in substantial
18 gainful activity since June 29, 2016, the alleged disability onset date. *Id.* at 15.

19 At **step two**, the ALJ found that Plaintiff had the following severe
20 impairments: post-traumatic stress disorder (PTSD); panic disorder;
21 schizoaffective disorder; and drug and alcohol abuse. *Id.* at 15–16.

22 At **step three**, the ALJ found that Plaintiff did not have an impairment or a
23 combination of impairments that meets or medically equals any Listing. *Id.* at 16-
24 17. The ALJ concluded that Plaintiff had a residual function capacity to perform:

25
26 medium work as defined in 20 CFR 416.967(c) except the claimant
27 can perform simple, routine, and repetitive tasks with only ordinary
28 production requirements. He can perform no fast paced work. The

1 claimant would work best independently with superficial contact with
2 coworkers and the general public.

3 *Id.* at 17.

4 At **step four**, the ALJ found that Plaintiff was unable to perform past
5 relevant work as a Janitor or Agricultural Produce Sorter. *Id.* at 24–25.

6 At **step five**, the ALJ found that Plaintiff was not disabled and that he was
7 capable of making a successful adjustment to other work that exists in significant
8 numbers in the national economy, including Industrial Cleaner, Laundry Worker,
9 and Cleaner II. *Id.* at 25–26.

10 **Issues for Review**

- 11 1. Did the ALJ err by failing to adhere to Social Security rules and regulations
12 pertaining to drug and alcohol abuse?
- 13 2. Did the ALJ err by failing to provide sufficient reasons for rejecting medical
14 opinions?

15 **Discussion**

- 16 1. Did the ALJ err by failing to adhere to Social Security rules and regulations
17 pertaining to drug and alcohol abuse?

18 Plaintiff argues that the ALJ erred by failing to follow Social Security
19 guidelines regarding drug and alcohol abuse. Specifically, Plaintiff argues that the
20 ALJ can only find that drug and alcohol abuse is material to a finding of disability
21 if (1) the record is fully developed and (2) the evidence establishes that a claimant
22 with co-occurring mental disorder(s) would not be disabled in the absence of drug
23 and alcohol abuse. However, here, Plaintiff argues that Dr. Sally Clayton, Ph.D.
24 (“Dr. Clayton”) testified that she could not offer an opinion about Plaintiff’s
25 limitations in the absence of a six- to twelve-month period of abstinence from
26 substance abuse. Thus, Plaintiff argues that—because Dr. Clayton could not
27 conclude that Plaintiff would not be disabled in the absence of drug and alcohol
28

1 abuse—the ALJ should have found Plaintiff’s drug and alcohol abuse immaterial
2 and awarded him disability benefits.

3 Defendant argues that the ALJ correctly applied the Social Security
4 guidelines regarding drug and alcohol abuse. Defendant states that the ALJ found
5 that Plaintiff’s drug and alcohol abuse was a severe impairment. However,
6 Defendant states that the ALJ found that Plaintiff was not disabled, *even when*
7 considering the effects of his drug and alcohol abuse. Thus, Defendant argues that
8 the Court should affirm the ALJ’s findings that Plaintiff is not disabled.

9 Plaintiff in reply argues that, though the ALJ did not make a finding of
10 disability, she in effect found that substance abuse was material because she rejected
11 medical opinion evidence supporting a finding of disability based on Plaintiff’s drug
12 and alcohol abuse. Thus, Plaintiff argues that the ALJ should have (1) assessed
13 Plaintiff’s limitations based on both his mental impairments and his drug and alcohol
14 abuse in order to determine whether he had a disability and then (2) determined
15 whether substance abuse was material to the finding of Plaintiff’s disability. But
16 here, Plaintiff argues that the ALJ instead ignored the effects of substance abuse
17 when making her disability finding.

18 *Legal Standard*

19 Generally, a claimant “cannot receive disability benefits ‘if alcoholism or
20 drug addiction would . . . be a contributing factor material to the Commissioner’s
21 determination that the individual is disabled.’” *Parra v. Astrue*, 481 F.3d 742, 746
22 (9th Cir. 2007) (citing 42 U.S.C. § 423(d)(2)(C)). In reaching a finding of
23 disability status, the ALJ must follow a specific analysis that incorporates the
24 sequential evaluation discussed above. 20 C.F.R. §§ 404.1535(a), 416.935(a). The
25 ALJ first must conduct the five-step inquiry without attempting to determine the
26 impact of a substance abuse disorder. *Id.* If the ALJ finds that the claimant is not
27 disabled under the five-step inquiry, the claimant is not entitled to benefits, and
28 there is no need to proceed with further analysis. *Id.* If the ALJ finds the claimant

1 disabled, and there is evidence of substance abuse, the ALJ must then proceed
2 under the sequential evaluation and §§ 404.1535 and 416.935 to determine if the
3 claimant would still be disabled absent the substance abuse. *Bustamante v.*
4 *Massanari*, 262 F.3d 949, 955 (9th Cir. 2001). If there is substantial evidence to
5 support the administrative findings, or if there is conflicting evidence supporting a
6 finding of either disability or non-disability, the finding of the Commissioner is
7 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir. 1987).

8 *Analysis*

9 Having considered the ALJ's opinion and Plaintiff's medical records, the
10 Court upholds the ALJ's decision because there is substantial evidence in the
11 record to support that Plaintiff was not disabled.

12 The ALJ found that Plaintiff was not disabled because he had the residual
13 functional capacity to perform medium work. AR at 25-26. In making this finding,
14 the ALJ followed a two-step process. First, the ALJ considered whether there was
15 an underlying medically determinable physical or mental impairment(s) that could
16 reasonably be expected to produce Plaintiff's symptoms. 20 C.F.R. § 416.929,
17 Social Security Ruling (SSR) 16-3p. Second, the ALJ evaluated the intensity,
18 persistence, and limiting effects of Plaintiff's symptoms to determine the extent to
19 which they limited his functional limitations. *Id.* For statements about the intensity,
20 persistence, or functionally limiting effects of Plaintiff's pain or other symptoms
21 that were *not* substantiated by objective medical evidence, the ALJ considered
22 other evidence in the record to determine if Plaintiff's symptoms limited his ability
23 to work. *Id.*

24 For the first step, the ALJ concluded that Plaintiff's medically determinable
25 impairments could reasonably be expected to cause the alleged symptoms. AR at
26 19. To reach this conclusion, the ALJ considered Plaintiff's testimony at two
27 hearings: an initial hearing in August 2018 and a supplemental hearing in April
28 2019 specifically to address Plaintiff's substance use and disability. At the first

1 hearing, Plaintiff testified that his most limiting impairment was his post-traumatic
2 stress disorder. *Id.* at 18, 43–48. He further testified that he was depressed,
3 experienced traumatic flashbacks, and did not like to talk about his trauma. *Id.*
4 Finally, he testified that talking about his trauma drove him to use substances and
5 that he would isolate socially and sleep in episodes that could last up to three or
6 four weeks. *Id.* When the ALJ asked what Plaintiff did during the day, Plaintiff
7 replied that he would sleep, help clean his aunt’s house, or babysit his cousin’s
8 children. *Id.* He also stated that he cared for these children every day by feeding
9 them and taking them to school. *Id.* However, Plaintiff explained to the ALJ that he
10 could not perform work—even in the absence of substance use—because he had
11 difficulty interacting with others. *Id.* When asked about his substance use, Plaintiff
12 stated that he last drank alcohol in 2016 and that he last used methamphetamine “a
13 couple days ago.” *Id.*

14 At the second hearing, Plaintiff again testified about his impairments, their
15 limiting effects, and his activities of daily living. *Id.* at 18–19, 65–67, 68–73.
16 Plaintiff testified that he stopped using drugs unassisted and outside of a treatment
17 setting, but that he was still limited by his mental health impairments. *Id.* However,
18 at this hearing, Plaintiff also provided testimony that cast doubt on his credibility.
19 For example, Plaintiff denied that he had ever been a sex worker or on probation,
20 even after the ALJ presented evidence of past sworn testimony of Plaintiff
21 describing his history with sex work and probation. *Id.* Furthermore, Plaintiff
22 provided testimony that called into question the severity of his impairments. For
23 example, when the ALJ cited to evidence in the record showing a lower level of
24 impairment, Plaintiff discounted this evidence as being due to care providers “[not]
25 listen[ing] to what [he’s] really saying” and “putting words in [his] mouth, like
26 always.” *Id.* at 71. Similarly, when asked about the treatment advice from his care
27 providers recommending that he apply for work every day, Plaintiff simply stated
28 that he was too stressed to work and had no motivation. *Id.* at 81.

1 At the second step, the ALJ concluded that Plaintiff's statements concerning
2 the intensity, persistence, and limiting effects of his symptoms were not entirely
3 consistent with the medical evidence and other evidence in the record. Specifically,
4 the ALJ noted that Plaintiff's inconsistent accounts of his sobriety, ability to work,
5 work history, history with the criminal justice system, and failure to cooperate with
6 multiple clinical providers and treatment recommendations led her to scrutinize
7 Plaintiff's subjective testimony more carefully when determining the impact of his
8 impairments. *Id.* at 19–20. The ALJ also noted that the objective medical evidence
9 in the record showed that Plaintiff was able to express himself with normal speech,
10 cooperative, pleasant, able to maintain eye contact and act within normal
11 behavioral limits, and oriented in all spheres; further, that Plaintiff exhibited a
12 normal memory and was otherwise within normal cognitive limits. *Id.* at 21, 392,
13 471, 497, 503, 509, 511, 521, 591, 612, 718. Finally, several medical opinions in
14 the record described Plaintiff's ability to learn new tasks, perform tasks after short
15 instructions, and adapt to work environments as only mildly or moderately limited.
16 *Id.* at 574–75, 584, 786–87. Therefore, even taking into account Plaintiff's
17 impairments, the ALJ concluded that Plaintiff had the residual functional capacity
18 to perform medium, non-fast paced, independent work and thus was not disabled.
19 *Id.* at 21, 25, 26.

20 Additionally, the Court finds that there is substantial evidence supporting
21 that Plaintiff's substance abuse was not material to the ALJ's finding of non-
22 disability. Plaintiff argues that, pursuant to SSR 13-2p, the ALJ cannot find
23 substance abuse material if the evidence in the record does not establish that
24 Plaintiff's co-occurring mental disorder(s) would improve to the point of non-
25 disability in the absence of substance abuse. ECF No. 17 at 5. However, Plaintiff
26 argues that the ALJ in effect found that substance abuse was material because she
27 rejected medical opinion evidence supporting a finding of disability even absent
28 Plaintiff's drug and alcohol abuse. *Id.*; ECF No. 19 at 2.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT...# 10**

1 In finding Plaintiff not disabled, the ALJ rejected the medical opinion of
2 Laurie Jones, MS LMFT (“Ms. Jones”), who continuously treated Plaintiff as his
3 therapist during the relevant period. AR at 60. Ms. Jones reported that Plaintiff
4 would have marked limitations absent substance abuse. *Id.* at 24, 587–90, 1024–
5 28. Conversely, the ALJ assigned great weight to the opinion of Dr. Clayton, who
6 testified at Plaintiff’s April 2019 hearing as an objective medical expert after
7 reviewing Plaintiff’s medical records. *Id.* at 20–21, 62–62. In contrast to Ms.
8 Jones, Dr. Clayton stated that there was difficulty in assessing the degree of
9 Plaintiff’s limitation given his ongoing substance abuse. *Id.* at 20, 65, 78. Dr.
10 Clayton testified that she did not agree with the opinions of other experts in the
11 record finding Plaintiff disabled because it was impossible to determine Plaintiff’s
12 limitations without a six-to-twelve-month period of sobriety. *Id.*

13 The ALJ properly weighed the opinions of Ms. Jones and Dr. Clayton. The
14 ALJ heavily weighed the opinion of Dr. Clayton because she had the opportunity
15 to review the entire medical record, her opinions were well supported by specific
16 references to the medical evidence, and her opinions were consistent with other
17 medical reports in the record. AR at 22; *see also id.* at 522–25 (Dr. Steven Olmer,
18 M.D. reported that he could not recommend Plaintiff for disability due to
19 inconsistently reported symptoms and a lack of enough sustained objective
20 information). Conversely, the ALJ assigned no weight to the opinion of Ms. Jones
21 because her opinion was inconsistent with the overall record and Plaintiff’s own
22 descriptions of his abilities. *Id.* at 24. Notably, Ms. Jones reported that Plaintiff
23 was not capable of maintaining a regular schedule and getting up in the morning,
24 which contradicts Plaintiff’s own testimony that he was able to regularly care for
25 his cousin’s children by feeding them and taking them to school. *Id.* at 18, 24, 43–
26 48. Such inconsistencies suggest that Ms. Jones overly relied on Plaintiff’s own
27 subjective complaints of his limitations, which the ALJ noted reduced the
28 supportability of her opinion. *Id.* at 24. When taking into account the medical

1 opinion evidence in the record and the unreliability of Plaintiff's self-reported
2 symptoms, there is substantial evidence to support the ALJ's conclusion that
3 Plaintiff could perform medium work and therefore was not disabled.

4 The ALJ properly adhered to Social Security rules and regulations by
5 engaging in the five-step inquiry without attempting to determine the impact of any
6 substance abuse disorder that Plaintiff might have. 20 C.F.R. §§ 404.1535(a),
7 416.935(a). Because the ALJ found that Plaintiff was not disabled, the ALJ was not
8 required to proceed with any further analysis regarding Plaintiff's substance abuse.
9 Moreover, there was substantial evidence supporting both the ALJ's finding of non-
10 disability and the fact that substance abuse was not material to her decision. Thus,
11 the Court upholds the ALJ's decision.

12 2. Did the ALJ err by failing to provide sufficient reasons for rejecting medical
13 opinions?

14 Plaintiff also argues that the ALJ failed to properly weigh the opinions of
15 four different people or sets of persons: (1) Ms. Jones; (2) Dr. Clayton; (3) Patrick
16 Metoyer, Ph.D. ("Dr. Metoyer"); and (4) the Department of Social and Health
17 Services (DSHS) examiners, including R.A. Cline, Psy.D. ("Dr. Cline"); Holly
18 Petaja, Ph.D. ("Dr. Petaja"); and Tasmyn Bowes, Psy.D. ("Dr. Bowes")
19 (collectively the "DSHS examiners"). The Court shall discuss each in turn.

20 **a. Ms. Jones**

21 Plaintiff argues that the ALJ improperly rejected Ms. Jones' opinion.
22 Plaintiff states that the ALJ rejected Ms. Jones' opinion because (1) she did not
23 address Plaintiff's drug and alcohol abuse when proffering her conclusions on
24 Plaintiff's limitations and (2) she relied on Plaintiff's subjective complaints of
25 limitation. However, Plaintiff states that (1) in her first assessment, Ms. Jones
26 clearly indicated that her conclusions excluded any limitations due to drug and
27 alcohol abuse and (2) in her second assessment, which occurred more than six
28 months after Plaintiff testified that he had stopped using methamphetamines, she

1 still noted that Plaintiff had marked limitations in all the functional areas. Plaintiff
2 also states that Ms. Jones based her conclusions not only on Plaintiff's subjective
3 complaints, but also on her numerous encounters with Plaintiff, her knowledge
4 about his background, and her observations and impressions. Thus, Plaintiff argues
5 that the ALJ rejecting Ms. Jones' opinion constitutes harmful error because her
6 assessment supported a finding of Plaintiff's disability, even without the drug and
7 alcohol abuse.

8 Defendant in response argues that the ALJ had valid reasons for rejecting
9 Ms. Jones' opinion. Defendant states that Ms. Jones indicated that she excluded the
10 effects of drug and alcohol abuse from her first assessment of Plaintiff, but that this
11 exclusion was not valid because Plaintiff's drug and alcohol abuse could not
12 reliably be differentiated from his other mental health concerns. Additionally,
13 Defendant states that Ms. Jones' opinion about Plaintiff's mental limitations came
14 "in the form of checklists with minimal supporting narrative explanations" and that
15 her contemporaneous mental status examinations of Plaintiff were inconsistent
16 with her assessment conclusions. ECF No. 18 at 10. Finally, Defendant states that
17 Ms. Jones' August 2018 opinion that Plaintiff was unable to maintain a schedule
18 and get up in the morning was inconsistent with Plaintiff's self-described activities
19 of taking his cousin's children to school every morning. Thus, Defendant argues
20 that these constituted sufficient reasons for the ALJ to reject Ms. Jones' opinion.

21 Plaintiff in reply first argues that Ms. Jones could both validly assess
22 Plaintiff's mental limitations and exclude any limitations stemming from the drug
23 and alcohol abuse. Second, Plaintiff argues that the ALJ's finding that Ms. Jones
24 overly relied on Plaintiff's subjective complaints was not supported by any
25 discussion or evidence, whereas Ms. Jones' report specifically states that she based
26 her assessment on many other factors besides Plaintiff's symptom testimony.
27 Finally, Plaintiff argues that Defendant's example of inconsistency between Ms.
28 Jones' assessment and Plaintiff's self-described activities was taken out of

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT...# 13**

1 context—instead, Plaintiff argues that he told Dr. Clayton that he could only take
2 his cousin’s children to school every day “80% of the time” due to his mental
3 health limitations. ECF No. 19 at 5–6. Thus, Plaintiff argues that the ALJ
4 improperly discounted Ms. Jones’ opinion.

5 In determining whether a claimant’s impairments are severe at step two, the
6 ALJ evaluates medical evidence submitted and explains the weight given to the
7 opinions of acceptable medical sources in the record. SSR 85–28. Primary weight
8 is given to the views of treating physicians, absent specific and legitimate reasons
9 for rejecting them that are supported by substantial evidence. 20 C.F.R.

10 § 404.1527.² The opinion of an acceptable medical source, such as a physician or
11 psychologist, is generally given more weight than that of an “other source.” *See*
12 SSR 06-03p. “Other sources” for opinions—such as nurse practitioners,
13 physician’s assistants, therapists, teachers, social workers, chiropractors, and
14 nonmedical sources—are not entitled to the same deference as acceptable medical
15 sources. 20 C.F.R. §§ 404.1502(e), 404.1527(f); *Dale v. Colvin*, 823 F.3d 941, 943
16 (9th Cir. 2016). An ALJ may discount an “other source’s” opinion by providing a
17 relevant reason for doing so. *Popa v. Berryhill*, 872 F.3d 901, 906 (9th Cir. 2017);
18 *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). Where a medical source
19 opinion is based primarily on a claimant’s self-reported symptoms, claimant
20 credibility is an appropriate factor to consider in the evaluation of medical
21 evidence at step two. *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir.2005).
22 Generally, more weight is given to the opinions of professionals who have a more
23 substantial treatment relationship with the claimant. 20 C.F.R. § 416.927(c)(2).

24
25 ² For Social Security disability claims filed on or after March 27, 2017, the ALJ
26 “will not defer or give[] any specific evidentiary weight . . . to any medical
27 opinion(s).” 20 C.F.R. § 404.1520c(a). However, this claim was filed on June 29,
28 2016. AR at 228.

1 The Court finds that there is substantial evidence supporting the ALJ's
2 decision to assign no weight to Ms. Jones' opinion. While Ms. Jones—whose
3 official title is a Licensed Marriage and Family Therapist—is a certified health
4 care professional and was a source of ongoing continuing treatment to Plaintiff
5 during the relevant period, Ms. Jones is not a medical physician and is therefore
6 not a qualified medical source. AR at 38, 47, 49, 60. Thus, Ms. Jones constitutes an
7 “other source” and her opinion is not entitled to the same deference as an opinion
8 from an acceptable medical source.

9 In her reports, Ms. Jones stated that Plaintiff experienced moderate to
10 marked limitations in all four of the Paragraph B criteria. *Id.* at 24, 587–90, 1024–
11 28. Specifically, Ms. Jones stated that Plaintiff was not capable of maintaining a
12 regular schedule, could not tolerate stress, and could not tolerate interpersonal
13 interactions. *Id.* Pursuant to the instructions that she was provided for her
14 examination, Ms. Jones evaluated Plaintiff without considering his ongoing
15 substance use. *Id.*

16 However, as discussed above, Ms. Jones' conclusions were inconsistent with
17 Plaintiff's reports about his own abilities, suggesting that Ms. Jones overly relied
18 on Plaintiff's self-reports of his limitations. For example, Ms. Jones concluded that
19 Plaintiff would have difficulty maintaining a regular schedule. *Id.* at 590. But this
20 is contradicted by Plaintiff's testimony that he cares for his cousin's children and
21 takes them to school daily.³ *Id.* at 18, 44–46. Additionally, Ms. Jones' conclusion

22 _____
23 ³ At the initial hearing in 2018, Plaintiff testified that he would take his cousin's
24 children to school and help clean his aunt's house every day. AR at 44–45. When
25 the ALJ asked to what extent Plaintiff's impairments affected his ability to do these
26 things, Plaintiff responded, “I'd say about 80 percent.” *Id.* at 46. When the ALJ
27 asked Plaintiff to elaborate on the effects of his impairments, Plaintiff responded:
28 “Like, the rushing. Trying to rush to get the kids dressed. Sometime drivers driving

1 that Plaintiff had moderate to marked limitations in all four of the Paragraph B
2 criteria was inconsistent with several other expert and medical opinions on the
3 record. *See, e.g., Id.* at 61, 83–95, 97–110, 572–76, 781–85. Thus, because Ms.
4 Jones is an “other source” and because there was substantial evidence supporting
5 the ALJ discounting Ms. Jones’ conclusions, the Court upholds the ALJ’s decision
6 regarding Ms. Jones’ opinion.

7 **b. Dr. Clayton**

8 Plaintiff argues that the ALJ improperly relied on Dr. Clayton’s opinion to
9 reach a conclusion of non-disability. Plaintiff states that Dr. Clayton testified that
10 she could not offer an opinion about Plaintiff’s functioning in the absence of a six-
11 to twelve-month period of sobriety, which Plaintiff had not yet achieved at that
12 time. Plaintiff also states that the ALJ gave “great weight” to Dr. Clayton’s opinion
13 in reaching her conclusion that Plaintiff was not disabled. But Plaintiff argues that
14 Social Security guidelines state that, if the evidence fails to establish that a
15 claimant with a co-occurring mental disorder(s) would improve to the point of non-
16 disability without drug and alcohol abuse, the ALJ must find that the drug and
17 alcohol abuse immaterial to the disability determination. Thus, Plaintiff argues
18 that—because Dr. Clayton expressly refused to offer an opinion on whether
19

20 _____
21 extra slow but you’ve got to go the speed limit and I don [sic] not like the speed
22 limit. I just make sure I get the kids there on time because I feed them too.” *Id.*
23 From the testimony, it is unclear what Plaintiff’s report of an 80% effect is
24 referencing. If this referred to Plaintiff’s impairments having an 80% effect on his
25 ability to engage in daily tasks, the ALJ could have properly discounted that due to
26 Plaintiff’s other unreliable testimony. If, conversely, Plaintiff meant that he was
27 only able to engage in these tasks 80% of the time, that is still significant and
28 suggests that Plaintiff can keep a regular schedule.

1 Plaintiff's mental impairments would improve without drug and alcohol abuse—
2 the ALJ improperly relied on her opinion to reach a conclusion of non-disability.

3 Defendant in response argues that Dr. Clayton's opinions do not contradict
4 the ALJ's conclusion. Defendant states that the ALJ found that Plaintiff was not
5 disabled, even considering his drug and alcohol abuse. Thus, especially because
6 Dr. Clayton did not identify any functional limitations in Plaintiff, Defendant
7 argues that her testimony provides no basis for overturning the ALJ's finding of
8 non-disability.

9 Plaintiff in reply argues that, by relying on Dr. Clayton's testimony—which
10 was given as part of a supplemental hearing to help assist the ALJ with a drug and
11 alcohol abuse materiality finding—the ALJ in effect determined that Plaintiff was
12 not disabled due to his substance abuse. Thus, Plaintiff argues that the ALJ should
13 have engaged in the full drug and alcohol abuse analysis when determining
14 whether Plaintiff was disabled.

15 The Court finds that there is substantial evidence supporting the ALJ's
16 decision to assign great weight to Dr. Clayton's opinion. The ALJ can give greater
17 weight to an acceptable medical source—such as a physician or psychologist—
18 whose opinion is consistent with the record and supported with relevant
19 explanation. 20 C.F.R. § 416.927. Here, the ALJ assigned great weight to Dr.
20 Clayton's opinion because (1) though she was not a treating source, she was able to
21 review Plaintiff's entire medical record prior to providing her opinion and (2) her
22 opinion was both supported with relevant explanation and consistent with the
23 entire record, including with opinions of other experts. AR at 22.

24 Plaintiff suggests that Dr. Clayton's opinion was paramount to the ALJ's
25 finding of non-disability. However, given that other medical experts had the same
26 opinion as Dr. Clayton, there is still substantial evidence supporting the ALJ's
27 conclusion. For example, Dr. Olmer also stated that he could not provide a
28 recommendation for disability “[a]s a result of inconsistent reports of symptoms

1 and treatment attendance.” *Id.* at 524-25. Thus, the Court upholds the ALJ’s
2 decision to give greater weight to Dr. Clayton’s opinion.

3 **c. Dr. Metoyer**

4 Plaintiff argues that the ALJ erred in (1) giving weight to Dr. Metoyer’s
5 opinion because he did not review Plaintiff’s medical records in order to reach his
6 conclusions; (2) finding that Dr. Metoyer had not offered an opinion about
7 Plaintiff’s residual functional capacity; and (3) finding that the ALJ’s conclusion
8 about Plaintiff’s residual functional capacity was consistent with that of Dr.
9 Metoyer. First, Plaintiff states that, of all of Plaintiff’s medical records, Dr. Metoyer
10 only reviewed one report from 2009. Second, Plaintiff asserts that Dr. Metoyer
11 assessed Plaintiff’s functional limitations in both his narrative report and on the
12 form attached to his report. Third, Plaintiff claims that, whereas Dr. Metoyer
13 concluded that Plaintiff had moderate to marked limitations in various work
14 situations, the ALJ did not account for these limitations in her own conclusions
15 regarding Plaintiff’s residual functional capacity.

16 Defendant in response argues that the ALJ’s conclusions about Plaintiff’s
17 residual functional capacity were supported by substantial evidence, including Dr.
18 Metoyer’s opinion. Defendant states that Dr. Metoyer concluded that Plaintiff’s
19 ability to deal with usual stress in the workplace would be markedly impaired if he
20 had to perform persistent activities or complex tasks, withstand task pressures, or
21 interact with other individuals. Thus, Defendant argues that the ALJ relied on this
22 conclusion and translated it into a residual functional capacity of simple, routine
23 tasks with ordinary production requirements; no fast-paced work; and independent
24 work with superficial contact with others. Defendant also argues that, just because
25 Plaintiff may have found Dr. Metoyer’s opinion less persuasive had he been the
26 trier of fact, that is insufficient grounds to overturn the ALJ’s findings.

27 Plaintiff in reply argues that the ALJ’s conclusion about Plaintiff’s residual
28 function capacity is not consistent with Dr. Metoyer’s opinion. Plaintiff states

1 that—while the ALJ’s conclusion took into account some of Dr. Metoyer’s
2 conclusions, such as limiting Plaintiff to simple, routine, repetitive tasks—it did
3 not account for others, such as Dr. Metoyer concluding that Plaintiff would be
4 markedly limited in his ability to deal with usual stress in the workplace if it
5 involved persistent activities, task pressure, or interacting with other individuals.

6 The Court finds that there is substantial evidence supporting the ALJ’s
7 decision to assign great weight to Dr. Metoyer’s opinion. As discussed above, the
8 ALJ can give greater weight to an acceptable medical source—such as a physician
9 or psychologist—whose opinion is consistent with the record and supported with
10 relevant explanation. 20 C.F.R. § 416.927. Here, Dr. Metoyer concluded that
11 Plaintiff experienced mild and moderate limitations in most of the assessed
12 categories but had a marked limitation in “responding appropriately to usual work
13 situations and changes in a routine work setting.” AR at 786–87. Specifically, Dr.
14 Metoyer stated that Plaintiff “appears to have the ability to reason and understand”
15 and Plaintiff’s “ability to maintain regular attendance in the workplace is
16 moderately impaired.” *Id.* at 785. However, Dr. Metoyer stated that Plaintiff would
17 experience marked limitations in the workplace with complex tasks and interacting
18 with other individuals. *Id.*

19 Thus, when determining Plaintiff’s residual functional capacity, the ALJ
20 stated that Plaintiff could perform simple, routine, and repetitive tasks with
21 superficial contact with coworkers and the general public. *Id.* at 17. This is a
22 reasonable interpretation and incorporation of Dr. Metoyer’s opinion that Plaintiff
23 had a marked limitation in completing complex tasks and interacting with others.
24 Thus, Dr. Metoyer’s opinion is consistent with the ALJ’s determination of
25 Plaintiff’s residual functional capacity.

26 Plaintiff also argues that Dr. Metoyer did not review Plaintiff’s medical
27 records to reach his conclusions and that Dr. Metoyer only reviewed one report
28 from 2009. This is contradicted by Dr. Metoyer’s report, which stated “[a] review

1 of records was conducted including Yakima Neighborhood Health Services, record
2 dated 08/03/2018, 07/18/2018, physical evaluation record dated 09/06/2016,
3 psychological evaluation record dated 03/19/2009, The Psychological Corporation
4 WAUS 3, full scale IQ score 58, less than 1% extremely low range, record dated
5 02/20/2009.” *Id.* at 782. Thus, Dr. Metoyer’s opinion was formed based on a direct
6 examination of Plaintiff and a comprehensive review of his relevant medical
7 records.

8 Because Dr. Metoyer is a medical source who engaged in a medical
9 examination and review of medical records before providing an opinion about
10 Plaintiff’s limitations that was consistent with the ALJ’s conclusion, the Court
11 uphold the ALJ’s decision to give great weight to Dr. Metoyer’s opinion.

12 **d. The DSHS examiners**

13 Plaintiff argues that the ALJ assigned insufficient weight to Drs. Cline,
14 Petaja, and Bowes’ opinions. Plaintiff states that the ALJ only gave their opinions
15 partial weight because the ALJ found that these doctors had relied on Plaintiff’s
16 subjective testimony, which the ALJ deemed not credible. However, Plaintiff states
17 that these doctors’ opinions were not solely based on Plaintiff’s subjective
18 testimony but were also based on their own observations and testing. Thus,
19 Plaintiff argues that the ALJ discounting their opinions constitutes harmful error
20 because these doctors’ opinions supported a greater degree of mental limitation
21 than the ALJ assessed in her findings.

22 Defendant in response argues that there was substantial evidence supporting
23 the ALJ’s decision to only give these doctors’ opinions partial weight. For
24 example, Dr. Cline stated that she based her evaluation on “information that is
25 made available to the examiner . . . and the claimant’s self-report”—however,
26 Defendant states that no information was made available to Dr. Cline, which meant
27 that she solely relied on Plaintiff’s self-reporting. ECF No. 18 at 17. Similarly, for
28 Drs. Petaja and Bowes, they stated that they relied on Dr. Cline’s description of

1 Plaintiff's symptoms and Plaintiff's client report, respectively. Moreover,
2 Defendant states that the ALJ was justified in giving these doctors' opinions less
3 weight because their opinions were inconsistent with Plaintiff's record as a whole
4 and because the doctors did not offer detailed explanations to support their
5 opinions.

6 Plaintiff in reply once again argues that, by discounting the DSHS
7 examiners' opinions, the ALJ essentially made a finding that Plaintiff was not
8 disabled due to his substance abuse. Plaintiff also argues that the DSHS examiners
9 based their opinions on more than Plaintiff's self-report—they also considered
10 their own observations and testing.

11 The Court finds that there is substantial evidence supporting the ALJ's
12 decisions regarding the DSHS examiner opinions. As stated above, the ALJ can
13 assign weight to the opinion of experts based on consistency with the record,
14 relevant examination of the claimant, and supporting explanations. 20 C.F.R.
15 § 416.927.

16 First, there is substantial evidence supporting the ALJ's decision to give Dr.
17 Cline's decision partial weight. AR at 23. Dr. Cline reported that, because Plaintiff
18 experienced moderate limitations in several basic work activities like
19 understanding, remembering, and persisting in tasks by following instructions,
20 Plaintiff's overall impairment level was moderate. *Id.* at 574–75. This conclusion
21 is consistent with the opinion of Dr. Metoyer, who similarly concluded Plaintiff
22 had moderate limitations in understanding, remembering, and carrying out
23 instructions, and making judgments on work-related decisions. *Id.* at 786.

24 However, while Dr. Cline reached a conclusion consistent with the overall
25 record, Dr. Cline's review of Plaintiff's medical record suggest a reliance on
26 Plaintiff's own self-reporting. In the report, Dr. Cline stated that the evaluation was
27 based on “information that is made available to the examiner . . . and the
28 claimant's self-report.” *Id.* at 572. However, Dr. Cline's report notes that no

1 records were reviewed. *Id.* (stating “[r]ecords reviewed: N/A”). This suggests Dr.
2 Cline’s conclusion was solely based on Plaintiff’s self-reporting, which the ALJ
3 deemed inconsistent and unreliable. *Id.* at 19–21. Thus, because Dr. Cline’s
4 opinion—though consistent with the overall record—was based on Plaintiff’s
5 inconsistent self-reporting, the Court upholds the ALJ’s decision to partially weigh
6 Dr. Cline’s opinion.

7 Second, there is substantial evidence supporting the ALJ’s decision to give
8 Dr. Bowes’ opinion partial weight. Dr. Bowes is a psychologist—thus, as an
9 acceptable medical source who directly examined Plaintiff, her opinion is allowed
10 some weight. *Id.* at 580–86; SSR 06-03p. However, Dr. Bowes did not review any
11 of Plaintiff’s records before reaching her conclusion. AR at 581 (stating “[r]ecords
12 reviewed: None”). Thus, because Dr. Bowes did not review any of Plaintiff’s
13 medical records, the Court upholds the ALJ’s decision to give Dr. Bowes’ opinion
14 partial weight.

15 Finally, there is substantial evidence supporting the ALJ’s decision to give
16 little weight to Dr. Petaja’s opinion. *Id.* at 23-24. In forming her opinion, Dr. Petaja
17 did not directly examine Plaintiff, but instead relied on only three medical records,
18 one of which was Dr. Cline’s evaluation that relied on Plaintiff’s inconsistent self-
19 reporting. *Id.* at 578. Thus, the Court upholds the ALJs decision to give Dr.
20 Petaja’s opinion little weight.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 17, is **DENIED**.

3 2. Defendant's Motion for Summary Judgment, ECF No. 18, is
4 **GRANTED**.

5 3. The District Court Clerk is directed to enter judgment in favor of
6 Defendant and against Plaintiff.

7 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to file
8 this Order, provide copies to counsel, and **close** the file.

9 **DATED** this 8th day of October 2021.



13
14

A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

15 Stanley A. Bastian
16 Chief United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28